

Proposition 207 - Smart and Safe

Fact Sheet

Relevant provisions that affect the Judicial Branch:

Workplace Conduct

1. Preserves the rights of employers to maintain a drug and alcohol free workplace, including the ability of employers to have workplaces policies restricting the use of marijuana by current or prospective employees.
2. Does not require an employer to allow or accommodate the use, consumption, possession, transfer, display, transportation, sale or cultivation of marijuana in a place of employment.
3. Does not prevent employers from prohibiting or regulating conduct allowed by this chapter when it occurs on their properties.

Allowable Possession Provisions; criminal code; charging

1. Notwithstanding any other law that specifies the following activities for persons over 21 are the basis for detention, search, arrest, the sole basis for seizure or forfeiture of assets, imposing penalties under the state or local law, or limiting any right or privilege conferred or protected by state or local law:
 - a. Possessing, consuming, purchasing, processing or manufacturing of one ounce or less of marijuana, except not more than 5 grams may be in the form of marijuana concentrate;
 - b. Possessing, transporting, cultivating, or processing up to six marijuana plants for personal use at the individual's primary residence with the following restrictions;
 - i. No more than 12 plants may be produced at a single residence where two or more residents are at least 21 years old;
 - ii. Cultivation takes place within a closet, room, greenhouse or other enclosed area on the grounds of the residence equipped with a lock or other security device that prevents access by minors;
 - iii. Cultivation takes place in an area where the plants are not visible from public view without optical aids
 - c. Transferring one ounce or less of marijuana to an individual who is at least 21 years old if the transfer is without remuneration and is not advertised or promoted to the public
 - d. Transferring up to six marijuana plants to an individual who is at least 21 years old if the transfer is without remuneration and is not advertised or promoted to the public

- e. Acquiring, possessing, manufacturing, using, purchasing, selling or transporting paraphernalia relating to the cultivation, manufacture, processing or consumption of marijuana or marijuana products
 - f. Assisting another individual who is at least 21 years of age with any of the activities listed above.
- 2. Specifies that persons with metabolites or components of marijuana in the person's body is guilty of driving under the influence if the person is also impaired to the slightest degree.
- 3. Establishes that the odor of marijuana or burnt marijuana does not by itself constitute a reasonable suspicion of a crime, except when a law enforcement officer is investigating whether a person is driving under the influence.
- 4. Classifies possession of more than 1 oz of marijuana but less than 2.5 oz of marijuana a petty offense.
- 5. Establishes penalties for persons under 21 years of age who possess, consume, transport, or transfers without remuneration one ounce or less of marijuana or paraphernalia relating to the consumption of marijuana or marijuana products:
 - a. A first violation is a civil penalty of not more than \$100 and the court may order up to four hours of drug education or counseling;
 - b. A second violation is a petty offense and the court may order up to eight hours of drug education and counseling;
 - c. A third or subsequent violation is a class 1 misdemeanor.
- 6. Classifies smoking marijuana in a public place or open space as a petty offense.
- 7. Establishes penalties for unlicensed persons who cultivate marijuana plants where they are visible from public view without optical aids or outside of enclosed areas that are equipped with a lock or security device that prevents access by minors:
 - a. A first violation is a petty offense
 - b. A second or subsequent violation is a class 3 misdemeanor
- 8. Establishes penalties for persons under 21 years of age who misrepresent their age via fraudulent written identification with the intent to induce a person to sell or otherwise transfer marijuana or a marijuana product to the person under 21 years of age:
 - a. A first violation is a petty offense (maximum penalty \$250);
 - b. A second or subsequent violation is a class 1 misdemeanor;
- 9. Establishes penalties for persons under 21 years old who solicit another person to purchase marijuana or marijuana products:
 - a. A first violation is a petty offense;
 - b. A second or subsequent violation is a class 3 misdemeanor.

Expungement Provisions (effective July 12, 2021 with the exception of provision 1, which is effective on the effective date of the act)

1. Allows a person with a pending complaint, information or indictment for any of the following offenses to move for dismissal:
 - a. Possessing, consuming or transporting 2.5 ounces or less of marijuana, of which not more than 12.5 grams was in the form of marijuana concentrate;
 - b. Possessing, transporting, cultivating or processing more than six marijuana plants at the individual's primary residence for personal use;
 - c. Possessing, using or transporting paraphernalia relating to the cultivation, manufacture, processing or consumption of marijuana.
2. Allows any individual who was arrested for, charged with, adjudicated or convicted by trial or plea of, or sentenced for any of the following offenses (eligible offenses) based on or arising out of conduct occurring before July 12, 2021 to petition the court to have the record for that arrest, charge, adjudication, conviction or sentence expunged:
 - a. Possessing, consuming or transporting 2.5 ounces or less of marijuana, of which not more than 12.5 grams was in the form of marijuana concentrate;
 - b. Possessing, transporting, cultivating or processing more than six marijuana plants at the individual's primary residence for personal use;
 - c. Possessing, using or transporting paraphernalia relating to the cultivation, manufacture, processing or consumption of marijuana.
3. Outlines the court process for expungement:
 - a. Upon receipt of a petition for expungement, the court shall notify the prosecuting agency of the filing of the petition and allow the agency to respond to the petition within 30 days;
 - b. The court is permitted to hold a hearing on the request of either the petitioner or the prosecuting agency, or if the court concludes there are genuine disputes of fact regarding whether the petition should be granted;
 - c. The court shall grant the petition unless the prosecuting agency establishes by clear and convincing evidence that the petitioner is not eligible for expungement;
 - d. The court shall issue a signed order or minute entry granting or denying the petition in which it makes findings of fact and conclusions of law;
 - e. If the court grants a petition for expungement, the signed order or minute entry required shall do all of the following:
 - i. If the petitioner was adjudicated or convicted of an eligible offense, vacate the judgment of adjudication or conviction;
 - ii. State that it expunges any record of the petitioner's arrest, charge, conviction, adjudication and sentence;

- iii. If the petitioner was convicted or adjudicated of an eligible offense, state that the petitioner's civil rights, including the right to possess firearms, are restored, unless the petitioner is otherwise not eligible for the restoration of civil rights on grounds other than a conviction for an eligible offense.
 - iv. Require the clerk of the court to notify the Department of Public Safety, the prosecuting agency and the arresting law enforcement agency, if applicable, of the expungement order;
 - v. Require the clerk of the court to seal all records relating to the expunged arrest, charge, adjudication, conviction or sentence and allow the records to be accessed only by the individual whose record was expunged or the individual's attorney.
- 4. Specifies that an arrest, charge, adjudication, conviction or sentence that is expunged may not be used in a subsequent prosecution by a prosecuting agency or court for any purpose.
- 5. Allows a petitioner to file a direct appeal with the court if the court denies a petition for expungement.
- 6. Requires the court, on motion, to dismiss with prejudice any pending complaint, information or indictment based on any eligible offense, including charges or allegations based on or arising out of conduct occurring before the effective date of the Act. (effective on the effective date of the Act, not the effective date of the expungement provisions)
- 7. Allows the individual charged with an eligible offense to petition the court to expunge records of the arrest and charge or allegation prior to July 12, 2021.
- 8. Requires the Department of Public Safety to seal and separate the expunged record from its records and inform all appropriate state and federal law enforcement agencies of the expungement, unless the petitioner is indigent, and the Department may charge a reasonable fee.
- 9. Requires the arresting and prosecuting agencies to identify in each agency files and electronic records the petitioners arrest, charge, conviction, adjudication, and sentence are expunged and cannot make those available as public record.
- 10. Permits an individual whose record of arrest, charge, adjudication, conviction or sentence is expunged to state the individual has never been arrested for, charged with, adjudicated or convicted or, or sentenced for the crime that is subject of the expungement
- 11. Gives the Supreme Court rulemaking authority to implement expungement provisions.
- 12. Allows the Supreme Court to sponsor public service announcements or other notifications to individuals who may be eligible to file petitions for expungement for eligible offenses.

13. Allows prosecuting agencies to file petitions for expungement on behalf of any individual prosecuted by that agency.
14. Allows the Attorney General to file petitions for expungement on behalf of any individual.

DUI:

1. Does not allow an individual to consume marijuana products while driving, operating, or riding in the passenger seat or compartment of an operating motor vehicle, boat, vessel, aircraft, or another vehicle used for transportation while impaired to the slightest degree
2. Does not prevent the state from enacting and imposing penalties for driving, flying, or boating while impaired to even the slightest degree by marijuana
3. Considers a person who metabolites or components of marijuana in the person's body guilty of driving under the influence if impaired to the slightest degree

Enforcement:

1. Allows any citizen to commence a special action in superior court against the Department of Health Services if the Department fails to adopt rules necessary to implement the Act on or before June 1, 2021 or fails to begin accepting marijuana establishment applications to compel the Department to perform these duties.
2. Allows a marijuana establishment applicant to commence a special action in superior court to compel the Department to issue a license or send a notice of denial within 60 days after receiving a complete marijuana establishment application if the Department has failed to do so.

Fiscal Impacts

1. Appropriates \$4 million to the Department of Health Services to distribute grants to nonprofits that provide outreach to individuals eligible to file petitions for expungement and that assist in the expungement process.
2. Establishes the Smart and Safe Arizona Fund, monies in this fund:
 - a. Are continuously appropriated;
 - b. Are non-transferable to other funds except for specific expenses as enumerated in the Act (see #4 for the court's eligible transfer);
 - c. Do not revert to the General Fund; and
 - d. Are administered by the State Treasurer.
3. Revenues in the Smart and Safe Arizona Fund come from:
 - a. Dispensary license fees, application fees, and renewal fees paid to the Department of Health Services;
 - b. Civil penalties imposed by the Department of Health Safety for dispensary violations;

- c. A 16% excise tax on all (non-medical) marijuana products sold; and
 - d. Any delinquent tax penalties plus interest.
- 4. Requires the Treasurer to transfer monies from the Smart and Safe Arizona Fund to the Supreme Court and to the Department of Public Safety for actual reasonable costs incurred to process petitions for expungement.
- 5. Requires the Treasurer to transfer monies from the Smart and Safe Arizona Fund for any other mandatory expenditure of state revenues required to implement or enforce the responsible adult use of marijuana chapter created by the Act in Title 36.
- 6. Establishes the Justice Reinvestment Fund, monies in this fund:
 - a. Are continuously appropriated;
 - b. Are non-transferable to other funds except as enumerated;
 - c. Do not revert to the general fund;
 - d. Are exempt from the provisions relating to lapsing appropriations; and
 - e. Are administered by the State Treasurer.
- 7. Defines Justice Reinvestment Programs as programs that focus on:
 - a. Public and behavioral health, including evidence-based and evidence-informed substance use prevention and treatment and substance use early intervention services;
 - b. Restorative justice, jail diversion, workforce development, industry-specific technical assistance or mentoring services for economically disadvantaged persons in communities disproportionately impacted by high rates of arrest and incarceration;
 - c. Addressing the underlying causes of crime, reducing drug-related arrests and reducing the prison population in Arizona; and
 - d. Creating or developing technology and programs to assist with the restoration of civil rights and the expungement of criminal records.
- 8. Requires the Treasurer to transfer monies from the Justice Reinvestment Fund to pay:
 - a. The reasonable costs to administer the fund; and
 - b. The reasonable administrative costs incurred by the Department to administer this section.
- 9. Requires the treasurer to transfer all monies into the Justice Reinvestment Fund on or before June 30 and December 31 of each year as follows:
 - a. 35% to county public health departments in proportion to the population of each county for the purpose of providing Justice Reinvestment Programs or distributing grants to qualified nonprofit organizations to provide Justice Reinvestment Programs in that county;
 - b. 35% to the Department to distribute grants to qualified nonprofit organizations that provide Justice Reinvestment Programs in Arizona; and

- c. 30% to the Department for the purpose of addressing important public health issues that affect Arizona.

Lawful Operation of Marijuana Establishments Provisions

1. Notwithstanding any other state or local law that specifies the following activities for marijuana establishments, testing facilities or their agents may constitute the basis for detention, search, arrest, the sole basis for seizure or forfeiture of assets or the basis for imposing penalties for:
 - a. Possessing marijuana or marijuana products
 - b. Purchasing, selling or transporting marijuana and marijuana products to or from a marijuana establishment
 - c. Selling marijuana and marijuana products to consumers (with age and weight restrictions)
 - d. Cultivating, producing, testing, manufacturing or processing marijuana or marijuana products by any means including by chemical extraction or synthesis
2. Extends the protections from penalties to agents of marijuana establishments that sell or transfer marijuana to individuals under 21 years of age if the agent reasonably verified that the individual appeared to be 21 years of age or older by means of a government issue photo identification.
3. Extends the protections from penalties to any individual, corporation or other entity to sell, lease or otherwise allow property or goods that are owned, managed or controlled by the individual, corporation or other entity to provide services to a marijuana establishment, testing facility, or agent acting on their behalf in connection with activities authorized by the Act.
4. Contains enforcement provisions for the Attorney General to enforce violations of advertising provisions.

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